

Protective Order Committee
Judicial Conference of Indiana

Minutes
July 25, 2003

The Protective Order Committee met at the Indiana Judicial Center in Indianapolis on Friday, July 25, 2003, from 12:00 p.m. – 4:00 p.m.

1. Members present. Tammy Baitz, George E. Brown, and John W. Forcum, Chair
2. Staff present. Jeffrey Bercovitz and Tom Jones provided the committee with staff assistance.
3. Guests present. Major Fred Pryor and Major Dan Meek, Indiana State Police, were also present.
4. Minutes. The minutes of the meeting on June 27, 2003 were approved.
5. Trial Rule 65. Judge Forcum distributed a letter dated 7/10/03 from Mr. Jack Stark concerning the potential overlap of Trial Rule 65, **Matter of Anonymous**, 786 N.E.2d 1185 (Ind. 2003) and Indiana's Protection Order statutes. The committee prepared a response. (See Attachment No.1)
6. Discussion with Major Pryor.
 - a. Judge Forcum asked if service information could be placed in IDACS. Major Pryor reported there is no field in IDACS on a national basis for service information. The explanation nationally is if there was a field, but it was not completed, it would be construed as if the protection order was not served. He said there is a miscellaneous field of 500 characters where this could be placed. He suggested local law enforcement keep this information manually.
 - b. Judge Forcum asked if the entire confidential form must be completed since much of the same information is in the standard protection orders. Major Pryor said the categories listing the information in the protection order on the confidential form are from the national IDACS manual. He suggested our committee match up our protection, no contact and workplace violence restraining orders with the information in the confidential form. All IDACS operators can then be trained to enter protection order information the same way onto the confidential form.
 - c. Judge Forcum distributed a packet of information concerning HEA 1849 prepared by Tom Jones, in order to discuss how to get the judicial determination of domestic violence into IDACS. Major Pryor said Ron Miller and another person at the Indiana State Police were working on this question. He understood something unique must be tied back to the arrest and disposition for the information in the form to be added to the criminal history file of the offender.
7. Other.
 - a. Jeff Bercovitz distributed a draft notice of the retreat for August 21-22 in Indianapolis.
 - b. Committee members reviewed questions submitted to the FAQ table of the Protection Order Website.

c. Protection Order Deskbook. Jeff Bercovitz distributed all completed deskbook outlines to members of the committee. They agreed to use the Probate Deskbook as a whole for a model and forms should be in all capital letters and bold in the Table of Contents.

8. Next meeting dates. Committee members agreed meet at the following times: Thursday and Friday, August 21-22, 2003 for a two-day work-study session on the deskbook beginning at 10:30 a.m. on Thursday at the Judicial Center, Friday, October 24, 2003; and Friday, January 30, February 27, March 26, April 23, and June 25, 2004 from 12:00 noon – 4:00 p.m. at the Indiana Judicial Center.

Respectfully submitted,

Jeffrey Bercovitz, Director
Juvenile and Family Law

July 25, 2003

Mr. Jack L. Starke, Jr.
Director of Trial Court Services
Division of State Court Administration
115 West Washington Street, Suite 1080
Indianapolis, Indiana 46204

Dear Mr. Starke:

Thank you for your recent letter containing questions posed by the court concerning the interplay between Trial Rule 65, **Matter of Anonymous**, 786 N.E.2d 1185 (Ind. 2003) and Indiana's Protection Order laws. At training sessions held on protection order statutes, questions about the *ex parte* nature of the proceedings have been asked. Committee members repeatedly advise trial court judges to follow the new protection order statutes in order to prevent family and domestic violence and use the restraining order rules when property is a concern in domestic relations cases. The orders should be separate since protection orders will follow a much different path than the orders in the domestic relations case.

With that being said, the following is the committee's specific response to the questions in your recent letter.

1. **Does a petition for a protection order have to be verified?** Yes, or completed under oath.

What is the trial court judge obligated to do if the petition is not verified? Not grant the petition or dismiss the petition.

2. **What if a petition for protection order states that domestic or family violence "might" occur, but does not state that it has occurred?** The petition for protection should be granted only if the petition indicates domestic or family violence has occurred which includes credible threats of violence and the placing of family or household member in fear of physical harm without legal justification. See IC 34-6-2-34.5.

Will the procedure in Trial Rule 65 (B) or I.C. 34-26-5 for issuance of an order *ex parte* control? The committee believes the procedure in the statute should be followed.

3. **What if I state in my petition that violence has occurred?** If the petition for a protection order indicates domestic violence has occurred, an order for protection should be issued under the statute.

Which procedure, T.R. 65 (B) or IC 34-26-5 should be followed then? The statutory procedure should be followed for an order of protection. Other relief in domestic relations cases could be obtained under Trial Rule 65 (B) as a separate order of the court.

Please feel free to contact me if you have further questions.

Sincerely,

John W. Forcum, Chair
Protection Order Committee
Blackford Superior Court

Attachment No. 1